

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAWNELL LEADBETTER, individually
and all others similarly situated,

Plaintiff,

v.

COMCAST CABLE COMMUNICATIONS,
INC., d/b/a COMCAST CABLE,
SETTLEMENT SUPPORT CENTER, LLC,

Defendants.

CASE NO. C05-0892RSM

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT SETTLEMENT
SUPPORT CENTER, LLC'S
MOTION TO DISMISS

I. INTRODUCTION

This matter comes before the Court on defendant Settlement Support Center, LLC's ("SSC") Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (Dkt. #9). Defendant argues that all of plaintiff's claims are barred under the *Noerr-Pennington* doctrine. Defendant contends that it has engaged in constitutionally protected activity by attempting to contact plaintiff in an effort to settle an ongoing lawsuit. Moreover, defendant argues that the *Noerr-Pennington* doctrine bars plaintiff's claims because defendant's conduct is incidental to the prosecution of the lawsuit brought by the record companies against plaintiff. Alternatively, defendant argues that even if the *Noerr-Pennington* doctrine does not apply, plaintiff cannot prove any set of facts that would entitle her to any relief.

Plaintiff responds that defendant violated Washington's Consumer Protection Act and committed fraud by making false and deceptive statements to plaintiff in order to coerce payment. Additionally, plaintiff contends that defendant violated the Fair Debt Collection

1 Practices Act and the Washington Collection Agency Act when seeking to collect a debt when it
2 knew that no debt existed and no money was owed. Plaintiff also argues that the *Noerr-*
3 *Pennington* doctrine has no application because the doctrine applies only to antitrust litigation,
4 and plaintiff's lawsuit does not contain any antitrust allegations.

5 In addition, plaintiff argues that defendant SSC engaged in civil conspiracy when
6 defendant Comcast Cable Communications, Inc. ("Comcast") provided defendant SSC with
7 plaintiff's personal identifying information in the absence of a valid order, and in furtherance of
8 defendant SSC's collection activities. Plaintiff contends that defendants' conduct resulted in
9 damages and harm.

10 For the reasons set forth below, the Court GRANTS IN PART and DENIES IN PART
11 defendant's motion to dismiss, and allows plaintiff LEAVE TO AMEND its Washington
12 Collection Agency Act and fraud claims.

13 **II. DISCUSSION**

14 **A. Background**

15 On July 1, 2004, several record companies brought suit against plaintiff Dawnell
16 Leadbetter ("Leadbetter") as a "John Doe" in the United States District Court for the Eastern
17 District of Pennsylvania, under the caption, *Capitol Records, Inc. et al. v. John Doe*, CV No.
18 04-3011. (Dkts. #9-2 at 2 and #9-3 at 4). The record companies brought suit against "John
19 Doe" because they did not know the identity of Ms. Leadbetter at the time, only knowing her
20 Internet Protocol Address ("IPA"). In their complaint, the record companies alleged that "John
21 Doe" had committed copyright infringement by sharing files, including sound recordings, on the
22 Internet. (Dkt. #1-1 at 28). Further, the lawsuit alleged that the "[d]efendant contracted with
23 an Internet Service Provider ("ISP") . . . to provide Defendant with the access to the Internet
24 which facilitated Defendant's infringing activities." (Dkt. #10-2 at 3). This lawsuit was one of
25 roughly 11,000 brought by record companies against individuals for copyright infringement.
26

On October 13, 2004, Judge Cynthia M. Rufe issued an order in *Elecktra Entertainment Group, Inc. et al. v. Does 1-6*, CV No. 04-1241, authorizing the record companies to take “immediate discovery . . . to obtain the identity of each Doe Defendant by serving a Rule 45 subpoena that seeks information sufficient to identify each Doe Defendant, including name, address, telephone number, e-mail address, and Media Access Control address for each Defendant.” (Dkt. #9-4 at 2). Judge Rufe specifically ordered that the record companies “shall attach the Court Directed Notice Regarding Issuance of Subpoena . . . [and the] Rule 45 subpoena shall instruct the University of Pennsylvania¹ to distribute a copy of said notice to each Doe Defendant within seven days of service of the subpoena.” (Dkt. #9-4 at 2-3). Judge Rufe extended her order in paragraph 4 to apply to “all current and future cases filed in the Eastern District of Pennsylvania that are related to the above-captioned case.” (Dkt. #9-4 at 3).

To dispel any ambiguities regarding which cases Judge Rufe intended her order to apply to in paragraph 4, she issued another order on October 25, 2004, which was to replace paragraph 4 of the October 12, 2004 order. The relevant language reads:

4. This ruling applies to all current and future civil actions filed in the Eastern District of Pennsylvania that have been or will be assigned for pre-trial administrative purposes to a single judge in this Court and authorizes Plaintiffs to take immediate discovery limited to that authorized in this order from the relevant ISP [(“Internet Service Provider”)], in such cases including, but not limited to, **Comcast**, which has been identified as the Defendants’ ISP in these cases involving Doe defendants in the following numbered civil actions: 04-650, 04-293-2972, 04-2974, 04-2976, 04-2977, **04-2979-3021**, 04-3023-3029, 04-3032-3078, 04-3080-3123, 04-3125-3139, and 04-3175.

With respect to cable internet service providers, this ruling further authorizes disclosure of information pursuant to 47 U.S.C. § 551(c)(2)(B).

(Dkt. #9-5 at 2) (emphasis added). This order and the accompanying notice were served together with a subpoena upon defendant Comcast on November 22, 2004. (Dkt. #17-2 at 17).

In late January of 2005, plaintiff received a letter from the Los Angeles, California law

¹ In that specific case, the University of Pennsylvania possessed the identities of the “Doe Defendants.”

1 firm, Mitchell Silverberg & Knupp, LLP, stating that “[p]ursuant to a Court Order issued by
 2 [Judge Rufe], your Internet Service Provider (“ISP”) provided us with your identifying
 3 information, including your name and address.” (Dkt. #1-1 at 28). This letter was the first time
 4 plaintiff claims she had been notified that she was being sued by the record companies. *Id.*
 5 Furthermore, the letter directed plaintiff to contact defendant SSC as the record companies’
 6 representatives. (Dkt. #1-1 at 36). Plaintiff alleges that the letter threatened her to personally
 7 appear to defend herself in Pennsylvania and potentially seek payment of hundreds of thousands
 8 of dollars if she did not pay money to settle the case. (Dkt. #1 at 36). After receiving the letter,
 9 plaintiff contacted defendant SSC, and SSC offered to settle the case pending against her for
 10 \$4,500. (Dkts. #1 at 32 and #9-1 at 3). Defendant instructed plaintiff that seeking legal advice
 11 would drive up the cost of settlement. *Id.*

12 Plaintiff alleges it was not until April 26, 2005 that she was notified why she had been
 13 sued in Pennsylvania ten months earlier. (Dkt. #1-1 at 30). Defendant Comcast notified plaintiff
 14 that the record companies had sued her for copyright infringement of eight songs:

- 15 (1) MC Hammer - “Pray”
- 16 (2) Nu Shooz - “I Can’t Wait”
- 17 (3) Steven Winwood - “Don’t You Know What the Night Can Do?”
- 18 (4) Ricky Martin - “Livin’ La Vida Loca”
- 19 (5) Michael Jackson - “Dirty Diana”
- 20 (6) Kim Wilde - “Kids in America”
- 21 (7) Eurythmics - “Sweet Dreams (Are Made of This)”
- 22 (8) No Doubt - “Underneath It All”

23 (Dkt. #1-1 at 31). Plaintiff contends that she did not obtain these songs by file sharing,
 24 that her daughter in fact owned the No Doubt CD, and that she was either unfamiliar with, or
 25 disliked the other recordings she allegedly committed copyright infringement upon. *Id.*

26 As a result, plaintiff brought the instant action against defendants Comcast and SSC
 through its amended complaint filed on May 12, 2005. (Dkt. #1-1). Plaintiff alleges that
 defendant SSC violated Washington’s Consumer Protection Act (Revised Code of Washington
 (“RCW”) 19.86), the Fair Debt Collection Practitioner’s Act (15 U.S.C. § 1692), Washington’s

1 Collection Agency Act (RCW 19.16), committed common law fraud, and committed common
2 law civil conspiracy.² Defendant SSC now moves to dismiss the case pursuant to Fed. R. Civ. P.
3 12(b)(6). (Dkts. #9).

4 **B. Standard of Review for 12(b)(6) Motions**

5 A Rule 12(b)(6) motion should not be granted unless it appears that a plaintiff can prove
6 no set of facts in support of the claim entitling plaintiff to relief. *Conley v. Gibson*, 355 U.S. 41,
7 45-46, 78 S.Ct. 99 (1957). Further, a Rule 12(b)(6) dismissal is proper only where there is
8 either a “lack of cognizable legal theory” or “the absence of sufficient facts alleged under a
9 cognizable legal theory.” *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990).
10 Rule 12(b)(6) motions are generally viewed with disfavor and are rarely granted. *Hall v. City of*
11 *Santa Barbara*, 833 F.2d 1270, 1274 (9th Cir. 1991). In resolving a Rule 12(b)(6) motion, the
12 Court must construe the complaint in the light most favorable to the plaintiff, and accept all
13 well-pleaded factual allegations as true. *See Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-
14 338 (9th Cir. 1996); *see also Hahn v. Coddling*, 615 F.2d 830, 840 (9th Cir. 1980) (holding that
15 all reasonable inferences must be drawn in favor of the plaintiff). While matters outside the
16 pleadings are generally not considered, documents referred to in the complaint and forming a
17 basis for plaintiff’s claim may be considered. *Venture Associates v. Zenith Data Systems Corp.*,
18 987 F.2d 429, 431 (7th Cir. 1993).

19 The sufficiency of the pleading itself is a procedural matter governed by the Federal
20 Rules of Civil Procedure. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78-79, 58 S.Ct. 817
21 (1938). The pleadings need not allege facts constituting the claim for relief or defense, but need
22 only give fair notice of the pleader’s claim or defense so that opposing parties can respond,
23 undertake discovery, and prepare for trial. *Conley*, 355 U.S. at 47-48. Thus, evidentiary facts
24

25 ² Plaintiff’s complaint is ambiguous as to which causes of action apply to which defendants.
26 However, plaintiff clearly states in its response that the relevant causes of action as to defendant SSC are
those listed above.

1 generally need not be set forth in the complaint. *See, e.g., Leatherman v. Tarrant County*
2 *Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168-169, 113 S.Ct. 1160 (1993)
3 (holding that “[f]ederal courts and litigants must rely on summary judgment and control of
4 discovery to weed out unmeritorious claims”).

5 However, a Court may dismiss a case with prejudice if it determines, through judicial
6 notice, that material allegations upon which the plaintiff relies upon are false. *Interstate Natural*
7 *Gas Co. v. Souther California Gas Co.*, 209 F.2d 380, 384 (9th Cir. 1953). Additionally, a
8 Court may dismiss a claim when the plaintiff has included allegations disclosing some absolute
9 defense or bar to recovery. *See, e.g., United States v. Gaubert*, 499 U.S. 315, 324-325, 111
10 S.Ct. 1267 (1991) (recognizing that motions to dismiss can be granted when defendants have
11 statutory or common law immunities). A plaintiff’s failure to meet Rule 9(b)’s heightened
12 pleading requirements for fraud may also provide the basis for a Rule 12(b)(6) motion to
13 dismiss. *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1107-08 (9th Cir. 2003).

14 **C. Noerr-Pennington Doctrine**

15 Defendant argues that plaintiff’s claims are barred by the *Noerr-Pennington* doctrine on
16 the grounds that its conduct, as agents of the record companies, following the underlying lawsuit
17 is protected by the First Amendment. The *Noerr-Pennington* doctrine is an antitrust exemption
18 for activities involving the petitioning of governmental bodies, whether legislative, executive, or
19 judicial in nature. *See Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365
20 U.S. 127, 81 S.Ct. 523 (1961) (establishing exemption in the context of petitioning a legislature
21 for the passage of laws with anticompetitive intent); *United Mine Workers of Am. v.*
22 *Pennington*, 381 U.S. 657, 85 S.Ct. 1585 (1965) (expanding the doctrine’s coverage to
23 petitioning the executive for the enforcement of laws); *California Motor Transport Co. v.*
24 *Trucking Unlimited*, 404 U.S. 508, 92 S.Ct. 609 (1972) (further expanding the doctrine to cover
25 petitions for relief before a court or administrative agency). In other words, “[t]hose who
26 petition government for redress are generally immune from *antitrust liability*.” *Prof’l Real*

1 *Estate Investors, Inc. v. Columbia Pictures Indus., Inc.*, 508 U.S. 49, 56, 113 S.Ct. 1920 (1993)
2 (emphasis added).

3 Although the doctrine originally arose in the antitrust context, defendant correctly argues
4 that the immunity is constitutional and rooted in the First Amendment right to petition. *See*,
5 *e.g.*, *Computer Associates Int'l Inc. v. Am. Fundware, Inc.*, 831 F.Supp. 1516, 1552 (D.Colo.
6 1993) (recognizing that *Noerr-Pennington* is not limited to the antitrust arena).³ Furthermore,
7 *Noerr-Pennington* bars litigation arising from injuries received as a consequence of First
8 Amendment petitioning activity, regardless of the underlying cause of action asserted by
9 plaintiffs. *Azzar v. Primebank, FSB*, 198 Mich.App. 512, 517, 499 N.W.2d 793 (1993).
10 Therefore *Noerr-Pennington* immunity “bars any claim, federal or state, common law or
11 statutory, that has as its gravamen constitutionally-protected petitioning activity.” *Gen-Probe*,
12 *Inc. v. Amoco Corp., Inc.*, 926 F.Supp. 948, 956 (S.D.Cal. 1996). But courts may not go
13 beyond the constitutional basis for the immunity when applying the doctrine. *Id.*; *see also*
14 *Landmarks Holding Corp. v. Bermant*, 664 F.2d 891, 895-896 (2d Cir. 1981) (describing the
15 doctrine as essentially an application of the First Amendment).

16 While *Noerr-Pennington* immunity is broad, it does not cover all litigation which is
17 brought by an underlying plaintiff, as “sham” petitions do not fall within the ambit of the
18 doctrine. *See Noerr*, 365 U.S. at 144; *Cal. Motor Transp.*, 404 U.S. at 511. Litigation may be
19 a sham if the plaintiff can demonstrate that the underlying lawsuit was (1) objectively baseless in
20 the sense that no reasonable litigant could realistically expect success on the merits, and (2) a
21 concealed attempt to interfere with plaintiff’s business relationships. *Prof'l Real Estate*
22 *Investors*, 508 at 60-61; *see also White v. Lee*, 227 F.3d 1214, 1231-32 (9th Cir. 2000).

23
24 ³ Interestingly, plaintiff argues that *Noerr-Pennington* applies exclusively in the antitrust context,
25 and addresses defendant SSC’s arguments in one paragraph, stating, “[t]his doctrine has not been
26 extended beyond antitrust litigation.” (Dkt. #13 at 17). However, this Court notes that the United States
Supreme Court began extending the doctrine to other areas of law as early as 1982. *See NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913-915, 102 S.Ct. 3409 (1982) (applying *Noerr-Pennington* immunity in considering whether intent or purpose of a boycott was relevant).

1 In the instant case, it is too early for this Court to determine whether the record
2 companies' lawsuit against plaintiff was a sham. The original case, which was filed in the United
3 States District Court of the Eastern District of Pennsylvania, was voluntarily dismissed on April
4 7, 2005. (Dkt. #13 at 7). It was re-filed in this district, the United States District Court of the
5 Western District of Washington, under the caption, *Interscope Records, et al. v. Dawnell*
6 *Leadbetter*, No. CV05-1149 on June 24, 2005. In that case, Ms. Leadbetter has just recently
7 submitted an answer, arguing that she "did not engage in any of the alleged infringing activities,"
8 and stating that the record companies had "brought [the] suit against the wrong party."
9 Defendant's Answer, ¶ 11, No. CV05-1149-MJP-RSL.

10 Consequently, it would be premature for this Court to hold that the underlying lawsuit is
11 not a "sham" for purposes of *Noerr-Pennington* immunity when no discovery has been
12 conducted in that case. Plaintiff argues that there is a strong possibility that the record
13 companies will never be able to prove who may have downloaded the copyrighted materials.
14 (Dkt. #13 at 16). Coupled with the fact that the record companies filed suit against roughly
15 11,000 individuals, the Court must reserve judgment upon applying the immunity.

16 Accordingly, the Court denies defendant motion to dismiss based on the *Noerr-*
17 *Pennington* doctrine.

18 **D. Civil Conspiracy**

19 A civil conspiracy exists "if two or more persons combine to accomplish an unlawful
20 purpose or combine to accomplish some purpose not in itself unlawful by unlawful means."
21 *Corbit v. J.I. Case Co.*, 70 Wn. 2d 522, 528, 424 P.2d 290 (1967). Furthermore, the
22 conspirators must have entered the agreement to accomplish the object of the conspiracy. *Id.* at
23 528-529. Mere commonality of interests is insufficient to prove a conspiracy. *See Wilson v.*
24 *State*, 84 Wash.App. 332, 351, 929 P.2d 448 (1996).

25 In the instant case, plaintiff contends that defendants Comcast and SSC committed civil
26 conspiracy by agreeing to improperly acquire information. However, defendant Comcast did not

1 engage in any unlawful activity as it properly complied with a valid court order. Furthermore,
2 there are no allegations in plaintiff's complaint that the defendants came to any semblance of an
3 agreement.

4 Accordingly, the Court grants defendant's motion to dismiss plaintiff's civil conspiracy
5 claim.

6 **E. Washington's Consumer Protection Act**

7 To state a private cause of action under the Washington Consumer Protection Act, RCW
8 19.86.090 ("CPA"), a plaintiff must "establish five distinct elements: (1) unfair or deceptive act
9 or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff
10 in his or her business or property; and (5) causation." *Hangman Ridge Training Stables, Inc. v.*
11 *Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). In regards to the fourth
12 element, Washington courts have established that the CPA does not allow claims for personal
13 injury. *See, e.g., Washington State Physicians Ins. Exchange & Ass'n v. Fisons Corp.*, 122
14 Wn.2d 299, 318, 858 P.2d 1054 (1993) (recognizing that damages for mental pain and suffering
15 are not recoverable for a violation of the CPA because the statute only allows recovery for harm
16 to "business or property"); *see also White River Estates v. Hiltbruner*, 134 Wn.2d 761, 765 n.1
17 (1998) (noting that emotional distress damages are not available for a violation of the CPA).

18 Here, plaintiff does not allege in her complaint any damages to her business or property.
19 Plaintiff is an individual and does not raise any facts which lead the Court to believe she owns or
20 possesses a business. Additionally, plaintiff mentions no property that was damaged as a result
21 of defendant SSC's alleged violations of the CPA. Further, "had our Legislature intended to
22 include actions for personal injury within the coverage of the CPA, it would have used a less
23 restrictive phrase than injured in his or her 'business or property.'" *Fisons*, 122 at 318. In
24 addition, plaintiff does nothing to refute this claim, relying only upon the argument that because
25 the allegations contained in the complaint "are sufficient to put [SSC] on notice of [plaintiff's]
26 claims, its motion must be denied." (Dkt. #13 at 13).

1 Accordingly, the Court grants defendant's motion to dismiss plaintiff's Washington CPA
2 claim.

3 **F. The Fair Debt Collection Practitioner's Act**

4 The Fair Debt Collection Practices Act, 15 U.S.C. § 1692 ("FDCPA") generally imposes
5 civil liability upon third party debt collectors who use false, deceptive, abusive, unfair, or other
6 related debt collection activities in order to collect consumer debt. *See generally Kramsky v.*
7 *Trans-Continental Credit & Collection Corp.*, 166 F.Supp.2d 908, 910 (S.D. N.Y. 2001). The
8 threshold issue "is whether or not the dispute involves a 'debt' within the meaning of the statute.
9 *Turner v. Cook*, 362 F.3d 1219, 1226-27 (9th Cir. 2004) *citing Slenk v. Transworld Sys., Inc.*,
10 236 F.3d 1072, 1075 (9th Cir. 2001).

11 The FDCPA defines "debt" as "*any obligation or alleged obligation* of a consumer to
12 pay money arising out of a transaction in which the money, property, insurance or services
13 which are the subject of the transaction are primarily for personal, family, or household
14 purposes, whether or not such obligation has been reduced to judgement." 15 U.S.C. §
15 1692a(5) (emphasis added). The term "debt" has been construed broadly to include any
16 obligation to pay arising out of a consumer transaction. *See Arruda v. Sears, Roebuck & Co.*,
17 273 B.R. 332, 350 (D.R.I. 2002). Moreover, the statute is limited in its reach "to those
18 obligations to pay arising from consensual transactions, where parties negotiate or contract for
19 consumer-related goods or services." *Turner*, 362 F.3d at 1227 (recognizing that this generally
20 reflects the consensus judicial interpretation) *citing Bass v. Stopler, Koritzinsky, Brewster &*
21 *Neider, S.C.*, 111 F.3d 1322, 1326 (7th Cir. 1997).

22 In the instant case, defendant SSC argues that its offer to settle plaintiff's lawsuit with
23 the record companies does not constitute "debt" for purposes of the FDCPA because copyright
24 infringement is a tort, and the offer to settle did not arise out of a business dealing or consensual
25 agreement. In support of its argument, defendant SSC relies on *Turner*, which affirmed a
26 district court's dismissal of an FDCPA claim on a Rule 12(b)(6) motion to dismiss. *Turner*, 362

1 F.3d at 1228 (finding that tort judgment did not constitute debt). Although plaintiff argues that
2 it is contractually obligated to pay third parties for any alleged infringing activity, plaintiff never
3 had a direct agreement with defendant SSC. The FDCPA “may be triggered only when an
4 obligation to pay arises out of a *specified* “transaction,” and the “ordinary meaning of
5 ‘transaction’ necessarily implies some type of business dealing *between parties.*” *Hawthorne v.*
6 *Mac Adjustment, Inc.*, 140 F.3d 1367, 1371 (11th Cir. 1998) (emphasis added).

7 Furthermore, a fundamental canon of statutory construction directs the Court to
8 interpret words according to their ordinary meaning. *See Perrin v. United States*, 444 U.S. 37,
9 42, 100 S.Ct. 311 (1979). Consequently, there exists no “transaction” between plaintiff and
10 defendant SSC that could give rise to a “debt” for purposes of the FDCPA. Although “debt”
11 has been broadly construed by the courts, defendant SSC’s efforts to collect a potential tort
12 judgment does not meet this definition. In fact, plaintiff has never been obligated to pay this
13 amount, and most likely will not pay any amount should she successfully defend herself in the
14 underlying lawsuit brought by the record companies.

15 Accordingly, the Court grants defendant’s motion to dismiss plaintiff’s FDCPA claim.

16 **G. Washington’s Collection Agency Act**

17 Plaintiff alleges that defendant SSC has violated Washington’s Collection Agency Act,
18 RCW 19.16 (“WCAA”). Under the WCAA, which regulates the conduct of collection agencies,
19 a claim is defined as “any obligation for the payment of money or thing of value arising out of
20 any agreement or contract, express or implied.” RCW 19.16.100(5). Similar to the FDCPA
21 claim, defendant SSC argues that an offer to settle a tort action does not constitute a “claim” for
22 purposes of the WCAA.

23 No Washington decision has interpreted the statutory provisions of the WCAA. But it is
24 evident in this case that like plaintiff’s FDCPA claim, Ms. Leadbetter has no obligation to pay
25 the amounts that defendant SSC is demanding. In addition, there has been no express or implied
26 agreement between plaintiff and defendant which has created any obligation for plaintiff to pay.

1 However, the Court acknowledges that plaintiff's complaint states, "[v]iolations of RCW 19.16
2 constitute unfair or deceptive trade practices in violation of RCW 19.86." (Dkt.#1-1 at 37).
3 RCW 19.86.20 states, "[u]nfair methods of competition and unfair or deceptive acts or practices
4 in the conduct of any trade or commerce are hereby declared unlawful." Moreover, plaintiff's
5 complaint alleges that defendant SSC "failed to provide the name of the alleged original creditor
6 to whom Dawnell Leadbetter allegedly and falsely owed them money[,] . . . failed to provide to
7 Dawnell Leadbetter a written statement of account or the amount of the alleged debt[,] . . .
8 [and] failed to provide Dawnell Leadbetter with valid contact information regarding its address
9 and the fact that it was not properly licensed to collect 'debt' in Washington State." (Dkt. #1-1
10 at 37).

11 As a result, the Court allows plaintiff leave to amend its original complaint as to this
12 specific claim. Leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P.
13 15(a); *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990). Further, "[w]here a
14 more carefully drafted complaint *might* state a claim, a plaintiff *must be given at least one more*
15 *chance* to amend the complaint before the district court dismisses the action with prejudice."
16 *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991) (emphasis added). Considering that plaintiff
17 has included RCW 19.86 in its complaint, coupled with the allegations already included in
18 plaintiff's complaint which indicate to the Court that defendant has allegedly engaged in unfair
19 or deceptive acts, plaintiff should be allowed to amend its complaint.

20 Accordingly, the Court denies defendants motion to dismiss plaintiff's WCAA claim and
21 allows plaintiff leave to amend its complaint to delineate to the Court how violations of the
22 WCAA constitute violations of RCW 19.86.

23 **H. Fraud**

24 Rule 9(b) requires a plaintiff to plead fraud with particularity. Fed. R. Civ. P 9(b).
25 Furthermore, a plaintiff asserting fraud "must set forth more than neutral facts necessary to
26 identify the transaction. [She] must set forth what is false or misleading about a statement, and

1 why it is false.” *Blake v. Dierdorff*, 856 F.2d 1365, 1369 (9th Cir. 1988). The allegations must
2 be “specific enough to give defendants notice of the particular misconduct which is alleged to
3 constitute the fraud . . . so that they can defend against the charge and not just deny that they
4 have done anything wrong.” *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir. 1985).

5 In order to state a claim for fraud under Washington law, it must include nine elements:
6 (1) a representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker’s
7 knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the
8 person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is
9 made; (7) the latter’s reliance on the truth of the representation; (8) his right to rely upon it; and
10 (9) his consequent damage. *Hambleton Bros. Lumber Co. v. Balkin Enters., Inc.*, 397 F.3d
11 1217, 1233-34 (9th Cir. 2005) *citing* *Kirkham v. Smith*, 106 Wash.App. 177, 183, 23 P.3d 10
12 (2001).

13 In the instant case, defendant argues that the basis of plaintiff’s fraud claim is based upon
14 defendant SSC’s alleged misrepresentation “that Comcast had properly provided to them
15 Dawnell Leadbetter’s personal information pursuant to a court order in the case in which she
16 had ‘already been sued.’” (Dkt. #9-1 at 20). However, the complaint also consistently refers to
17 defendant SSC’s allegedly abusive tactics in order to coerce payment. But these references are
18 not included in plaintiff’s specific cause of action for fraud. Therefore, as with plaintiff’s WCAA
19 claim, where a complaint *might* state a claim, a plaintiff *must be given at least one more chance*
20 to amend the complaint before the district court dismisses the action with prejudice. *See Banks*,
21 928 F.2d at 1112 (emphasis added). Here, plaintiff asserts sufficient facts to potentially
22 constitute a cause of action for fraud.

23 Accordingly, the Court denies defendant’s motion to dismiss plaintiff’s fraud claim, and
24 allows plaintiff leave to amend its fraud claim.


25 **III. CONCLUSION**

26 Having reviewed defendant’s motion to dismiss (Dkt. #9), plaintiff’s response (Dkt.

1 #13), defendant's reply (Dkt. #16), the exhibits in support of those briefs, and the remainder of
2 the record, the Court hereby GRANTS IN PART defendant's motion to dismiss plaintiff's
3 FDCPA, Washington CPA, and civil conspiracy claims with prejudice. The Court hereby
4 DENIES IN PART defendant's motion to dismiss plaintiff's WCAA and fraud claims, and
5 allows plaintiff LEAVE TO AMEND its WCAA and fraud claims.

6 The Clerk shall forward a copy of this Order to all counsel of record.

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8 DATED this 19 day of August 2005.

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12 RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE
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